



Civil Resolution Tribunal

Date Issued: October 1, 2019

File: SC-2019-001463

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Credex Financial Services Inc. v. Bridge River Machine Shop Ltd.*, 2019
BCCRT 1151

B E T W E E N :

CREDEX FINANCIAL SERVICES INC.

APPLICANT

A N D :

BRIDGE RIVER MACHINE SHOP LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute about commission for collection services.
2. The applicant, Credex Financial Services Inc., is a collection agency. It entered into a contract with the respondent, Bridge River Machine Shop Ltd., to collect a debt

from a third party. The applicant says the respondent failed to pay its commission. The applicant claims \$1,100.75 in commission plus annual contractual interest of 26.89%.

3. The respondent denies the applicant's claim on the basis that the respondent collected the money itself.
4. The parties are each represented by whom I infer are company employees.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - a. order a party to do or stop doing something;

- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

- 9. The issue in this dispute is to what extent, if any, the applicant is entitled to commission of \$1,100.75 plus 26.89% in annual interest.

EVIDENCE AND ANALYSIS

- 10. In a civil claim such as this, the applicant bears the burden of proving its claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
- 11. The parties agree to the following facts. The respondent hired the applicant to help it collect \$4,193.32 owed to the respondent by a third-party debtor. The parties entered into an Assignment Agreement and Commercial Debt Assignment on May 17, 2018 (contract). A copy of the signed contract is in evidence.
- 12. The respondent claims the applicant failed to take any action to collect the debt. However, the applicant provided a debtor history report that shows it took multiple steps between May 2018 and September 2018 to attempt to collect the debt. On September 13, 2018, after speaking with the debtor, the applicant learned that the debtor had paid the full debt directly to the respondent. The respondent explains it had called the debtor directly and collected the debt itself. The applicant says that even though the respondent collected the debt itself, the contract still requires the respondent to pay the applicant's commission and interest.
- 13. The parties' email correspondence and contract show that the respondent assigned the debt to the applicant and agreed the applicant would act as its collection agent. The following additional contract terms are relevant to the respondent's requirement to pay commission and interest:

- a. We agree not to enter into any negotiations on accounts assigned to Credex and if we do we understand that Credex will cease collection action and we will be responsible to pay the full commission applicable under this agreement inclusive of accrued interest and costs.
- b. We authorize Credex to deduct any amounts owing to us from monies collected on our behalf including commission, interest, fees and expenses.
- c. We agree that Credex will be entitled to all interest collected by them post placement.
- d. We agree that any overdue accounts owed to Credex are subject to interest at the rate of 2% per month (26.89% per annum).
- e. The following commission fees will be applicable on all accounts assigned with a placement balance greater than \$500.000:

Commercial Accounts: 25.00%.

Consumer Accounts: 30.00%

- 14. The contract also allows cancellation or withdrawal of assigned debts on certain conditions. However, it is undisputed that the respondent never cancelled or withdrew its debt assignment prior to collecting the debt.
- 15. I find that the respondent entered into negotiations on the account it assigned to the applicant when it contacted the debtor directly and collected the debt itself. I find the contract therefore, requires the respondent to pay the applicant the full commission, inclusive of interest and costs, on the rates listed above.
- 16. The applicant did not demonstrate how it calculated the full commission. If this was a commercial account the rate would be 25% on \$4,193.32 (the debt principal), which equals, \$1,048.33. The debt assignment form says that the third-party debt was incurred on December 31, 2017 with interest at 2%. It does not say whether the interest rate is annual or monthly. I have calculated interest as an annual rate from

December 31, 2017 to September 13, 2018, the approximate collection date. This equals \$14.71. Since the applicant has not proven any greater amount, I find the respondent owes the applicant, \$1,063.04 (\$1,048.33 + \$14.71) in unpaid commission.

17. According to the contract's terms, the contractual interest was 26.89% per year. However, the applicant claimed only 24.00% in its Dispute Notice. I find the applicant is not entitled to any additional interest other than what it claimed in this dispute. Therefore, I will allow 24.00% interest on the \$1,063.04 in commission from the invoice date, September 21, 2018, to the date of this decision. This equals \$262.12.
18. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125.00 in tribunal fees. The applicant claimed no dispute-related expenses.

ORDERS

19. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,450.16, broken down as follows:
 - a. \$1,063.04 in commission,
 - b. \$262.12 in contractual interest, and
 - c. \$125.00 in tribunal fees.
20. The applicant is entitled to post-judgment interest, as applicable.
21. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been

made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

22. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Trisha Apland, Tribunal Member